

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

United States of America,)
 Plaintiff,)
vs.) Case No. 08-00026-04-CR-W-FJG
Christopher L. Elder,)
 Defendants.)

ORDER

Pending before the Court are defendant Elder's motion to suppress (Doc. #117), filed September 24, 2008, and the government's suggestions in opposition (Doc. #131), filed October 15, 2008.

An evidentiary hearing of this matter was held on October 28, 2008, and a report and recommendation (Doc. #221) entered by United States Magistrate Judge Sarah W. Hays on May 1, 2009. Defendant Elder filed objections to Magistrate Judge Hays' report and recommendation on May 1, 2009 (Doc. #222).

The Court, after independent review of the record and applicable law, adopts and incorporates by reference herein, the magistrate's findings and conclusions. Therefore, the Court finds that defendant Elder's motion to suppress the testimony of witness Hearn as to her lay identification of defendant's purported handwriting on photo copies of previously faxed prescriptions on due process grounds that the procedure used by the DEA was unconstitutionally suggestive (Doc. #117) should be denied.

Accordingly, it is

ORDERED that the magistrate's findings and conclusions are hereby adopted and incorporated herein by reference. It is further

ORDERED that defendant Elder's motion to suppress the testimony of witness Hearn as to her lay identification of defendant's purported handwriting on photo copies of

previously faxed prescriptions on due process grounds that the procedure used by the DEA was unconstitutionally suggestive (Doc. #117) is denied.

/s/Fernando J. Gaitan, Jr.

Judge Fernando J. Gaitan, Jr.
Chief United States District Judge

Dated: 05/27/09
Kansas City, Missouri